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No. 1513

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

AERO ENGINEERING CORPORATION, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI

PETITIONER'S REPLY BRIEF

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STATEMENT OF THE CASE

National Labor Relations Board's Memorandum in Opposition contains several material misstatements concerning the record in this matter.

The Board states that the Union initially exhibited to the Company a "batch" of authorization cards, claiming that they were signed by a majority of the Company's employees. The actual stipulation of the parties was that the Union "exhibited to the Company, BUT NOT SINGLY,

a batch of cards . . ." (A. 30).[1] (Emphasis supplied.) Again we emphasize that the Union and the Board have acknowledged throughout these proceedings that there has never been a determination as to whether or not the Union did, in fact, have a majority of signed authorization cards at any relevant time.

The Board improperly implies in its Memorandum that the Company did not request the cards to be checked against an employee roll. It was stipulated that the Company was prepared to prove that it asked to see the cards when they were first presented but that the Union refused to present them (A. 31, 49). In recognizing the Union, the Company reluctantly and unwisely relied on the Union's representation that it had a majority of the cards.

Footnote 3 of the Board's Memorandum suggests that the employees can file a petition for an election. However, when the Company questioned the Union's majority status, it simultaneously filed a petition for an election, which the Board denied (A. 26).

Clearly, the most outrageous misstatement is the Board's assertion that the Company did not attempt to introduce evidence to rebut the ill-founded presumption of majority status. THE COMPANY SOUGHT TO INTRODUCE THE AUTHORIZATION CARDS AND OTHER COMPETENT EVIDENCE TO REBUT THE PRESUMPTION. For purposes of this Petition and review, the Court must assume that the Union did not have a majority of signed and valid authorization cards and must accept as true the other evidence tendered by the Company in the hearing

1. "A" refers to the Appendix to the Briefs in the Court below which Respondent states in Footnote 1 to its Memorandum in Opposition that it has filed with this Court.

below. See Footnote 3 of Petition for Writ of Certiorari for a summary of the tendered evidence. We implore this Court to read the transcript of testimony beginning at Page 45 (A. 45). We are convinced that this Court will share the Company's frustration as it attempted to develop the indispensable facts relating to the Union's alleged majority status. The Board's blatant denial of the Company's constitutional right to present its defense strikes at the very heart of our judicial system.

ARGUMENT

The Board's misapprehension of this case is based upon its refusal to accept the principles stated by this Court in *International Ladies' Garment Workers Union (Bernhard-Altmann) v. National Labor Relations Board,* 366 U.S. 731 (1961). *Bernhard-Altmann* establishes that employer and union good faith beliefs and doubts in these cases are totally irrelevant. The only issue is whether the Union did IN FACT have a majority of valid authorization cards. 366 U.S. at 739; *N.L.R.B. v. Gissel Packing Co.,* 395 U.S. 575 (1969), Footnote 8.[2] Accordingly, the introduction of the authorization cards and other evidence was not only permissible, IT WAS MANDATORY.

The Board argues that the settlement agreement acknowledged the existence of majority status and the obligation to bargain. THE SAME WAS TRUE OF THE RECOGNITION AGREEMENT AND FORMAL COLLECTIVE BARGAINING AGREEMENT WHICH WERE CONDEMNED BY THIS COURT IN *BERNHARD-ALTMANN*. Remember, an employer's obligation

2. The cases which discuss the intricate requirements of valid authorization cards are legion. We do not know whether a majority of cards had been signed—much less whether the cards were valid.

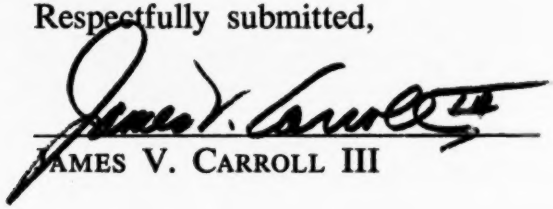
in a settlement agreement is to negotiate in good faith and, if possible, to embody any understanding reached into a formal collective bargaining contract. Thus, the ultimate objective of a settlement agreement is the execution of a formal collective bargaining agreement. Surely, the predicate, i.e., the settlement agreement, is entitled to no greater weight than the ultimate objective. Moreover, the existence of the settlement agreement is not equivalent to FACTS which prove that the Union had a majority of the authorization cards. The Board would have us engage in a presumption without basis in fact. Not only that, the Board has decreed that the presumption is IRREBUTTABLE, thus rendering impotent this Court's decision in *Bernhard-Altmann.*

The authorities relied upon by the Board are not in point inasmuch as they do not involve a question of initial majority status. The Company's Petition on file herein contains concise and pertinent arguments which relate directly to the critical questions posed and answered by this Court in *Bernhard-Altmann.*

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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